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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 UNITED FARM WORKERS, AFL-CIO,) Case No. C 07-03950 JF
12 et al.,)
13 Plaintiffs,) ANSWER TO AMENDED
14 v.) COMPLAINT
15)
16 ADMINISTRATOR,)
17 UNITED STATES ENVIRONMENTAL)
PROTECTION AGENCY,)
18 Defendant.)
19 _____)

20 Defendant Administrator, United States Environmental Protection Agency
21 (“EPA”), by undersigned counsel, answers Plaintiffs’ Amended Complaint for Declaratory
22 and Injunctive Relief (“Complaint”) as follows.

23 1. EPA admits that chlorpyrifos is an organophosphate. The remaining
24 allegations of the first sentence of Paragraph 1 are too vague and ambiguous for EPA to
25 formulate a response and are denied on that basis. The second and third sentences of
26 Paragraph 1 contain conclusions of law, to which no response is required. EPA denies the
27 fourth sentence of Paragraph 1. The fifth sentence of Paragraph 1 characterizes the EPA
28 NO C-07-03950 JE

1 Memorandum Finalizing Interim Reregistration Eligibility Decisions (“IREDs”) for
2 Organophosphate Pesticides, July 31, 2006, and the IRED itself, documents which speak
3 for themselves and are the best evidence of their contents. As for the allegations in the
4 sixth sentence of Paragraph 1, to the extent that it references actions taken by EPA, it
5 characterizes the EPA Memorandum Finalizing IREDs for Organophosphate Pesticides,
6 July 31, 2006, a document which speaks for itself and is the best evidence of its contents.
7 EPA denies that data was not made available to the public.

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9 2. Paragraph 2 summarizes the relief requested by Plaintiffs and no response
10 is required.

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12 3. EPA lacks sufficient knowledge and information to form a belief as to the
13 truth of the allegations contained in Paragraph 3.

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15 4. EPA lacks sufficient knowledge and information to form a belief as to the
truth of the allegations contained in Paragraph 4.

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17 5. EPA lacks sufficient knowledge and information to form a belief as to the
truth of the allegations contained in Paragraph 5.

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19 6. EPA lacks sufficient knowledge and information to form a belief as to the
truth of the allegations contained in Paragraph 6.

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21 7. EPA lacks sufficient knowledge and information to form a belief as to the
truth of the allegations contained in Paragraph 7.

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23 8. EPA lacks sufficient knowledge and information to form a belief as to the
truth of the allegations contained in Paragraph 8.

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25 9. EPA lacks sufficient knowledge and information to form a belief as to the
truth of the allegations contained in Paragraph 9.

1 9.1. EPA lacks sufficient knowledge and information to form a belief as to the
2 truth of the allegations contained in Paragraph 9.1.

3 10. EPA lacks sufficient knowledge and information to form a belief as to the
4 truth of the allegations contained in Paragraph 10.

5 11. EPA lacks sufficient knowledge and information to form a belief as to the
6 truth of the allegations contained in Paragraph 11.

7 12. EPA admits the allegation in the first sentence of Paragraph 12. The second
8 sentence of Paragraph 12 constitutes a conclusion of law, to which no response is
9 required.

10 13. Paragraph 13 contains a conclusion of law, to which no response is
11 required.

12 14. EPA admits the allegations in the first sentence of Paragraph 14. EPA
13 denies the allegations in the second sentence of Paragraph 14. EPA admits that
14 chlorpyrifos is acutely toxic and has caused systemic illness to workers by lowering
15 cholinesterase levels. EPA lacks sufficient knowledge and information to form a belief as
16 to the truth of the remaining allegations asserted in the third sentence of Paragraph 14.

17 15. With regard to the allegations in the first and second sentences of
18 paragraph 15, EPA has issued an extensive human health risk assessment for chlorpyrifos
19 that
20 sets forth in detail EPA's position regarding the potential human health effects from
21 exposure to chlorpyrifos. That document speaks for itself and is the best evidence of its
22 contents. EPA lacks knowledge and information sufficient to form a belief as to the truth
23 of the allegations in the third sentence and on that basis denies the same. The fourth
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1 sentence purports to characterize scientific studies which speak for themselves and are the
2 best evidence of their contents.

3 16. EPA admits that inhalation and dermal contact are potential pathways for
4 worker exposure to chlorpyrifos when they mix, handle, or apply chlorpyrifos or come
5 into contact with treated crops. EPA denies the remaining allegations of the first sentence
6 of Paragraph 16. With respect to the second sentence of Paragraph 16, EPA denies those
7 allegations except to admit that some people may be exposed to chlorpyrifos by eating
8 food with chlorpyrifos residues. As for the third sentence of Paragraph 16, EPA denies
9 those allegations except to admit that children may be exposed to chlorpyrifos from drift,
10 eating food with chlorpyrifos residues and coming into contact with items containing
11 chlorpyrifos residues.

12 17. With regard to the allegations in the first and second sentences of
13 paragraph 17, EPA admits that chlorpyrifos is a semi-volatile chemical and that
14 chlorpyrifos can become airborne after being deposited on soil and leaf surfaces. EPA
15 admits that this phenomenon becomes more likely to occur as temperatures increase. The
16 remaining allegations in the first two sentences of paragraph 17 are too vague and
17 ambiguous to enable EPA to admit or deny. The third sentence of Paragraph 17 is
18 speculation and no response is required. If further response is required, the allegations are
19 denied. The fourth sentence of Paragraph 17 refers to air monitoring studies, which
20 studies speak for themselves.

21 18. EPA admits the allegations in the first two sentences of Paragraph 18. EPA
22 denies the allegations in the third sentence but admits that as of 2001, approximately 11
23 million pounds of chlorpyrifos were used annually. EPA lacks sufficient knowledge and
24 information to form a belief as to the truth of the allegations contained in the 4th sentence

1 of Paragraph 18, and denies them on that basis, except that EPA admits that the California
2 Department of Pesticide Regulation website and other pesticide usage information sources
3 indicate that approximately two million pounds of chlorpyrifos were used on over 1.6
4 million acres in California in 2005.

5 19. EPA admits the allegations in the first two sentences of Paragraph 19.
6 With regard to the third sentence of Paragraph 19, EPA admits that corn and apples are
7 two of the largest agricultural markets for chlorpyrifos, but denies the remaining
8 allegations in the sentence.

9 10. Paragraph 20 characterizes the Federal Insecticide, Fungicide and
11 Rodenticide Act (“FIFRA”), which speaks for itself and is the best evidence of its
12 contents.

13 14. Paragraph 21 characterizes FIFRA, which speaks for itself and is the best
15 evidence of its contents.

16 17. Paragraph 22 characterizes FIFRA, which speaks for itself and is the best
evidence of its contents.

18 19. Paragraph 23 characterizes FIFRA, which speaks for itself and is the best
evidence of its contents.

20 21. EPA admits the first sentence of Paragraph 24. The second sentence of
22 Paragraph 24 characterizes EPA’s human health risk assessment documents, which speak
23 for themselves and are the best evidence of their contents. EPA denies the allegations in
24 the third sentence of Paragraph 24.

25 26. The first sentence of Paragraph 25 characterizes EPA’s human health risk
assessments, which speak for themselves and are the best evidence of their contents. EPA
27 denies the second sentence of Paragraph 25, although it admits that in many cases it uses a
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1 100-fold safety factor to establish its “level of concern” for worker risk from pesticides.
2 EPA denies the allegations in the third sentence, except to admit that a lower Margin of
3 Exposure (“MOE”) for a given pesticide generally indicates a greater degree of risk than a
4 higher MOE for that pesticide.

5 26. EPA denies the allegations in the first sentence of Paragraph 26, except to
6 admit that, in applying the FIFRA risk-benefit standard, EPA has sought to impose
7 additional mitigation measures for certain pesticides when occupational exposures have
8 reached a risk level of concern of an MOE of less than 100. EPA denies the allegations in
9 the second sentence of Paragraph 26. The third sentence of Paragraph 26 characterizes
10 FIFRA, which speaks for itself and is the best evidence of its contents.

11 27. EPA admits that EPA prepares ecological assessments in determining
12 whether to register or reregister a pesticide. EPA denies the remaining allegations of the
13 first sentence of Paragraph 27. As to the second sentence of Paragraph 27, EPA denies
14 except to admit that EPA has established levels of concern for non-target wildlife based on
15 registrant-generated data regarding lethality of a pesticide to the test subject. The
16 allegations in the third sentence of Paragraph 27 purport to characterize EPA’s ecological
17 risk assessments, which speak for themselves and are the best evidence of their contents.
18 EPA denies the allegation in the third sentence of Paragraph 27 that it imposes mitigation
19 through risk assessment, but EPA admits that EPA has sought to impose mitigation that
20 addresses ecological risk in some circumstances. The allegations in the fourth and fifth
21 sentences of Paragraph 27 contain conclusions of law, to which no response is required.

22 28. The first sentence of Paragraph 28 contains conclusions of law to which no
23 response is required. EPA denies the allegation in the second sentence of Paragraph 28.
24 The third sentence of Paragraph 28 cites reports, which reports speak for themselves and
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1 are the best evidence of their contents. EPA denies the allegations in the fourth sentence
2 of Paragraph 28.

3 29. In response to the allegations in Paragraph 29, EPA admits only that it
4 issued the chlorpyrifos IRED in 2001; the remaining portions of that paragraph
5 characterize the IRED, which speaks for itself and is the best evidence of its contents.
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7 30. Paragraph 30 characterizes the IRED, which speaks for itself and is the best
8 evidence of its contents.

9 31. Paragraph 31 characterizes the IRED, which speaks for itself and is the best
10 evidence of its contents.

11 32. The first and second sentences of Paragraph 32 characterize the IRED,
12 which speaks for itself and is the best evidence of its contents. The third sentence of
13 Paragraph 32 characterizes the EPA Memorandum Finalizing IREDs for Organophosphate
14 Pesticides, July 31, 2006, which speaks for itself and is the best evidence of its contents.
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16 33. Paragraph 33 characterizes the IRED, which speaks for itself and is the best
17 evidence of its contents.

18 34. Paragraph 34 characterizes the IRED, which speaks for itself and is the best
19 evidence of its contents.

21 35. Paragraph 35 characterizes the IRED, which speaks for itself and is the best
22 evidence of its contents.

23 36. Paragraph 36 characterizes the IRED, which speaks for itself and is the best
24 evidence of its contents.

25 37. The first sentence of Paragraph 37 characterizes FIFRA, which speaks for
26 itself and is the best evidence of its contents. The second sentence of Paragraph 37 is too
27 vague and ambiguous to enable EPA to admit or deny. EPA denies the allegations in the
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1 third sentence of Paragraph 37. The fourth sentence of Paragraph 37 contains conclusions
2 of law, to which no response is required.

3 38. Paragraph 38 characterizes the IRED, which speaks for itself and is the best
4 evidence of its contents.

5 39. The first sentence of Paragraph 39 characterizes the IRED, which speaks
6 for itself and is the best evidence of its contents. EPA denies the remaining allegations of
7 Paragraph 39.

9 40. The first sentence of Paragraph 40 characterizes the IRED, which speaks
10 for itself and is the best evidence of its contents. EPA denies the remaining allegations of
11 Paragraph 40.

12 41. The first sentence of Paragraph 41 characterizes the Food Quality
13 Protection Act (“FQPA”), which speaks for itself and is the best evidence of its contents.

15 42. The first and second sentences of Paragraph 42 characterize the Federal
16 Food Drug and Cosmetic Act (“FFDCA”), which speaks for itself and is the best evidence
17 of its contents.

18 43. The first and second sentences of Paragraph 43 characterize the FQPA. The
19 allegations in the third sentence of Paragraph 43 purport to quote a public EPA finding in
20 a Federal Register notice, which speaks for itself and is the best evidence of its contents.

22 44. Paragraph 44 characterize the EPA Memorandum Finalizing IREDs for
23 Organophosphate Pesticides, July 31, 2006, which speaks for itself and is the best
24 evidence of its contents.

25 45. EPA incorporates by reference its responses to Paragraphs 14 through 44 as
26 though set forth in full.

1 46. The first, second and third sentences of Paragraph 46 characterize and
2 quote portions of FIFRA, which speaks for itself and is the best evidence of its contents.

3 47. The first, second and third sentences of Paragraph 47 contain conclusions
4 of law, to which no response is required.

5 48. EPA denies the allegation in the first sentence of Paragraph 48. EPA
6 denies the second sentence of Paragraph 48, although it admits that in many cases it uses a
7 100-fold safety factor to establish its “level of concern” for worker risk from pesticides.
8 EPA denies the third sentence of Paragraph 48, except to admit that EPA has required
9 engineering controls and personal protective equipment for the use of some pesticides that
10 pose risks of concern.

11 49. Paragraph 49 characterizes the IRED, which speaks for itself and is the best
12 evidence of its contents.

13 50. Paragraph 50 characterizes the IRED, which speaks for itself and is the best
14 evidence of its contents.

15 51. Paragraph 51 characterizes the IRED, which speaks for itself and is the best
16 evidence of its contents.

17 52. The first sentence of Paragraph 52 characterizes FIFRA, which speaks for
18 itself and is the best evidence of its contents. The second sentence of Paragraph 52
19 purports to characterize the EPA Memorandum Finalizing IREDs for Organophosphate
20 Pesticides, July 31, 2006, which speaks for itself and is the best evidence of its contents.
21 The third and fourth sentences of Paragraph 52 contain conclusions of law, to which no
22 response is required.

23 53. EPA incorporates by reference its responses to Paragraphs 14 through 44 as
24 though set forth in full.

1 54. The first and third sentences of Paragraph 54 characterize FIFRA, which
 2 speaks for itself and is the best evidence of its contents. The second sentence of Paragraph
 3 54 contains conclusions of law, to which no response is required.

4 55. The first sentence of Paragraph 55 characterizes FIFRA, which speaks for
 5 itself and is the best evidence of its contents. The second, fourth, fifth, sixth and seventh
 6 sentences of Paragraph 55 contain conclusions of law, to which no response is required.
 7 The allegations in the third sentence of Paragraph 55 are vague and ambiguous, and EPA
 8 denies them on that basis.

10 56. The first and second sentences of Paragraph 56 characterize the IRED,
 11 which speaks for itself and is the best evidence of its contents.

13 57. The first and second sentences of Paragraph 57 characterize the IRED,
 14 which speaks for itself and is the best evidence of its contents.

15 58. The first, second and third sentences of Paragraph 58 characterize and
 16 quote portions of the IRED, which speaks for itself and is the best evidence of its contents.
 17 The fourth sentence of Paragraph 58 characterizes the EPA Memorandum Finalizing
 18 IREDs for Organophosphate Pesticides, July 31, 2006, which speaks for itself and is the
 19 best evidence of its contents. The fifth and sixth sentences of Paragraph 58 contain
 20 conclusions of law, to which no response is required.

22 **PRAYER FOR RELIEF**

23 EPA denies that plaintiffs are entitled to the relief requested.

24 **GENERAL DENIAL**

25 Except as expressly admitted or otherwise stated herein, EPA denies each and
 26 every allegation in Plaintiffs' Complaint.

28 **AFFIRMATIVE DEFENSE**

1 Plaintiffs have failed to state a claim upon which relief can be granted.

2 WHEREFORE, for these reasons, EPA requests that the Court deny Plaintiffs'

3 Amended Complaint with prejudice that the United States be awarded its costs in this

4 action, and that the Court grant such other and further relief as may be appropriate.

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6 Respectfully submitted,

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